Supreme Court, U.S.
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No. 05-_____

In The
Supreme Court of the United States

JEFFREY STERLING,

Petitioner,

v.

GEORGE TENET et al.,

Respondent.

On Petition For A Writ Of Certiorari To The
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Circuit Court of Appeals erred in affirming dismissal of a racial discrimination lawsuit filed by a CIA Operations Officer based on the state secrets privilege, prior to any discovery or consideration of non-privileged evidence, and without trying to implement any protective procedures to permit the continuation of the litigation.[1]

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[1] This question is virtually identical with respect to the legal issues surrounding the invocation of the state secrets privilege to that in *Sibel Edmonds v. Department of Justice et al.*, No. 05-____ (filed August 3, 2005), which is currently pending Certiorari consideration. For the first time in likely the history of the privilege, there are at least five state secrets cases that assert unlawful conduct by the Executive Branch that are pending at once, to include *Sterling* and *Edmonds*. Four of the cases are at the Circuit Court level or above. *See Herring v. United States*, 424 F.3d 384 (3rd Cir. 2005)(related to the original state secrets litigation in *U.S. v. Reynolds*), *Richard Horn. v. CIA et al.* (currently sealed, but on appeal before the D.C. Cir.); *Arar v. Ashcroft*, No. 04-CV-0249-DGT (E.D.N.Y., filed Jan. 22, 2004).

PARTIES TO THE PROCEEDINGS

The petitioner in this case is Jeffrey Sterling. The respondents are George Tenet, Director, Central Intelligence Agency (DCI Tenet); the Central Intelligence Agency (CIA); and Does #1-10.

RULE 29.6 STATEMENT

In accordance with United States Supreme Court Rule 29.6, petitioner states that he has no parent companies or non-wholly owned subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI[2]

Petitioner Jeffrey Sterling, a former Operations Officer for the CIA who alleged racial discrimination concerning his assignments and promotions, seeks review of the judgment of the United States Court of Appeals for the Fourth Circuit affirming the dismissal of his case on the basis of the state secrets privilege.

OPINIONS BELOW

The decision of the Court of Appeals is reported at 416 F.3d 338 (4th Cir. 2005). Appendix (App.) 1a-16a. The opinion of the U.S. District Court for the Eastern District of Virginia is unreported, App. 17a-30a, as is that of the U.S. District Court for the Southern District of New York. App. 31a-42a.

JURISDICTION

The Court of Appeals entered its judgment on August 3, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the Court of Appeals was invoked under 28 U.S.C. § 1291. The jurisdiction of the district court was invoked under Title Seven of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and 42 U.S.C. § 1981.

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[2] This document has undergone a classification review by the CIA. Although not intended to contain any classified information, it may well be that the CIA redacts portions of this document under the guise of secrecy. Therefore, the version filed with the Court may contain redactions. If that is the case, this Court should respectfully review an unredacted version of the pages contained herein.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The pertinent provisions of Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000e et seq.* are reprinted in the Appendix. *See* App. 43a-55a.

STATEMENT OF THE CASE

A. Claims Of Racial Discrimination And Retaliation

Sterling, an African-American, was an Operations Officer for the CIA in the Near East and South Asia Division from 1993-2001. *See* Court of Appeals Joint Appendix (C.A. App.) at 88. While employed by the CIA, Sterling experienced unlawful discriminatory practices at the hands of his CIA management. *See* Redacted Complaint at ¶¶5-11 (dated August 28, 2001).

Sterling arrived in New York in January 1999. *Id.* at ¶6. CIA management placed expectations on him "far above those required of non-African-American Operations Officers." *Id.* at ¶7. He was repeatedly passed over for operational opportunities and subjected to disparate treatment as the only African-American operations officer [THREE WORDS REDACTED BY CIA]. *Id.* at ¶8. In April 2000, CIA management, motivated by a discriminatory animus, presented him with an unrealistic and unjustified Advanced Work Plan that was considerably more demanding and "harsher" than any requirements placed on non-African-Americans. *Id.* at ¶7.

Sterling also contended that he was retaliated against for utilizing the equal employment opportunity (EEO) process. *Id.* at ¶9. Specifically, Sterling claimed that although he was not scheduled to undergo updated security processing until 2001, CIA management scheduled him to undergo security processing in May 2000. *Id.* Furthermore, he claimed that security processing is an "arbitrary regime within the CIA

that is utilized more for its nature as a tool for intimidation than any substantive security implications." *Id.*

Sterling claimed management vandalized his personal property. *Id.* The discrimination Sterling suffered was part of a pattern and practice racial discrimination he suffered at the CIA. Finally, he was denied work opportunities and routinely passed over for assignments by CIA management because of his size, the color of his skin and his ability to speak a language (taught to Sterling by the CIA) that was not typical for African-Americans. *Id.*

B. Proceedings Before Two District Courts

i. U.S. District Court for the Southern District of New York

The initial case was filed *pro se* on August 28, 2001.[3] Before filing an Answer, on April 18, 2002, the CIA filed a Motion to Dismiss the Complaint for Improper Venue or in the Alternative to Transfer Venue. The basis for dismissal was the formal assertion by DCI Tenet of the state secrets privilege. The parties thereafter briefed the issue, and the District Court issued its decision on January 23, 2003, wherein it found the invocation of the state secrets privilege to have been "inappropriate". *See* C.A. App. at 16 (*Sterling v. Tenet et al.*, No. 01 Civ. 8073, slip op. at 8 (S.D.N.Y Jan. 23,

[3] The CIA considers portions of the *pro se* Complaint to be classified, an allegation that Sterling disputes, and the document was placed under seal four months after it was filed. A redacted version of the Complaint was publicly filed in January 2002, and it is that document that will be cited to in this brief.